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Ontario Labour Relations Board HIGHLIGHTS

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in August of this year. These decisions will appear in the July/August issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Health and Safety – Reprisal – E began working for the employer in both British Columbia and Ontario and was permanently transferred to Ontario in March 2014 – In early February 2015 he was temporarily assigned to work in BC as a Warehouse Supervisor overseeing materials management for the Canada Winter Games – E raised a number of complaints concerning health and safety violations in the BC warehouse where he worked – There was no dispute concerning the fact that he raised these complaints, only over the merits of the complaints – Shortly after returning to Ontario later in February he was terminated from his employment – E alleged his termination was a reprisal for raising the health and safety concerns about the workplace in BC – The employer raised a preliminary motion that the Board did not have the jurisdiction to hear this matter – The Board found that although the Ontario legislature does not have the authority to establish the substance of workplace health and safety standards applicable in BC, an employee temporarily assigned by an Ontario employer to BC may rely upon certain rights under the OHSA and still has certain obligations – That is, the right to require an employer to satisfy the statutory obligation established under s. 25(2)(h) [take every precaution reasonable in the circumstances] still exists while the obligation under s. 28(1)(d) [to report the existence of a hazard] still remains – Therefore if a link can be made between his conduct and a right or obligation, then s. 50(1) of the OHSA provides the Board with the authority to remedy the situation – Motion dismissed – Matter continues

DIVERSIFIED TRANSPORTATION LTD./PACIFIC WESTERN GROUP OF COMPANIES; RE: DANIEL ESCUDERO; OLRB File No. 3770-14-UR; Dated August 11, 2015; Panel: Lee Shouldice (6 pages)

Certification – Construction Industry – Intimidation and Coercion – Membership Evidence – Practice and Procedure – The IUOE alleged that the membership evidence relied upon by Local 837 could not be relied upon by the Board as it was based on misrepresentation and obtained by intimidation or coercion – The Board accepted the IUOE's pleadings as true for the purposes of the motion and noted that it has consistently found that where a membership card is clear and there was no reason to believe the employee objectively misunderstood the card the Board will give effect to it – There was no suggestion that the two employees at issue could not read the card, nor that it was clearly an application for membership in the Labourers, notwithstanding the allegation they were told the card was for "informational purposes" – There was no basis for finding misrepresentation – Next, a revocation must be in writing and at least be sent to the union – The Board noted it was provided

with no authorities to suggest that an employee simply phoning and asking for his card back was sufficient to warrant a vote – In both certifications and terminations the question is whether the employee took the necessary steps to transform their intention into fact, which requires the employee to put their intention into writing – Finally, the Board found there was no intimidation or coercion – Directing a person to sign a card for "information purposes" is not coercive, and more importantly there was no allegation that the employees would be removed from the site if they did not sign – Additionally any concerns the employees may have had with respect to the need to sign a card was fully clarified with the employees at least two weeks before the application was filed – Application continues

MOFFAT EXCAVATING AND UTILITIES LTD.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; OLRB File No. 2581-14-R; Dated August 17, 2015; Panel: Jesse M. Nyman (14 pages)

Construction Industry – Membership Evidence – Practice and Procedure – Termination – Unfair Labour Practice – BUC objected to Local 183 having status to bring the Termination application on two grounds – First, the filing of a photocopy of a single membership card (with a delay of over 2 months to provide the original), and second, the signing of a membership revocation on the day of application for termination before the application was filed with the Board and delivered to BUC – The Board accepted the photocopy membership since the original was filed before the hearing date (and it matched the photocopy) – The Board was also satisfied with the photocopy because section 66 does not specify the form of proof required to establish membership, unlike the certification provisions and even a termination application under section 63 – Next the Board found the membership application card was not nullified by the revocation, given the Board's longstanding case law requiring revocations to take place prior to the day of application – Finally while the Board agreed that a trade union making an application under this section must represent at least one member at the time the application is made, there is no requirement that the trade union continue to represent that member after the application is made – Matter continues

OHL CONSTRUCTION CANADA INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: THE BUILDING UNION OF CANADA; OLRB File No: 1348-14-R & 1547-14-U; Dated August 18, 2015; Panel: Michael McFadden (9 pages)

Collective Agreement – Construction Industry – Lock-out – Sale of Business – Remedy – OFI, an active flooring contractor in the Toronto area operating out of Alex Avenue in Woodbridge, has a collective agreement with the Carpenters – When members of the Carpenters reported for work on June 17, 2015 they were told that OFI no longer existed and that a new company OFL had taken over – They were told by the new owner that OFL was "with" Local 183 and in order to keep working they must sign with Local 183 – The 11 employees did not sign cards nor were they assigned any work – The intervenors, Local 183 and CCWU, rely on collective agreements they have with OFL, and argued that the employees were not seeking to "continue" working but rather were simply offered new jobs with a new employer – The Carpenters argued a sale of business had taken place and OFL had unlawfully locked-out their members by refusing to continue their employment – The Board found that the facts pointed strongly to a sale of business: absence of a single allegation pointing to the opposite conclusion; the Carpenters' collective agreement had governed the workers up to June 16; OFL was manifestly in control on June 17; OFL controlled the ability of the employees to continue to perform the same work, using the same tools and vehicles etc.; and OFL was prepared to use its position of control to demand the employees agree to different terms and conditions of employment – Accordingly, but only for the purposes of the unlawful lock-out application, the Board found a sale had taken place – The Board noted that while there was no question this was the umpteenth chapter in the rivalry between these unions, the Board was not prepared to permit the Carpenters to "jump the queue" (as the CCWU alleged) on a s 69(2) application, nor could the intervening unions decide what the proper adjustment of the competing unions under ss. 69(4) to (10) would be without a full hearing – The Board said that determination will be made on the basis of the strength of their cases, not on the backs of the employees they both purport to represent – Declaration of unlawful lock-out with directions until the Board disposes of the sale of business application – Application granted

ONTARIO FLOORING INC.; RE: CARPENTERS AND ALLIED WORKERS

LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: 1379260 ONTARIO INC.; RE: ONTARIO FLOORING LTD.; RE: MR. GIUSEPPE (JOE) FAZARI; OLRB File No. 0762-15-U; Dated June 24, 2015; Panel: David A. McKee (14 pages)

Certification – Construction Industry – Practice and Procedure – On an issue as part of a reconsideration request addressing whether the certification application was properly delivered to the employer, the employer requested the Board provide it with information and documentation concerning telephone calls that the Board made to the employer pursuant to Information Bulletin No. 6 – This Bulletin indicates on the day the Confirmation of Filing is sent to the employer, the Board will telephone the employer to confirm the application has been filed and clarify the employer's obligations – The Board clarified why it was not prepared to inquire into or release this information – The issuance of a Confirmation of Filing is part of the Board's formal process whereas records and the nature of any conversations that may occur between Board's staff and a party are a different matter – The Board noted its staff are not compellable witnesses under s. 117, that it would not risk drawing its staff into the middle of the dispute and that the information sought, assuming a telephone call had taken place, would be evidence of such a sufficiently tangential nature that it would be easily trumped by the Board's policy interest in ensuring that its staff do not become embroiled in a conflict – Matter continues

SEMA RAILWAY STRUCTURES INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No: 0442-15-R; Dated August 17, 2015; Panel: Eli A. Gedalof (2 pages)

COURT PROCEEDINGS

Duty of Fair Representation – Judicial Review – The applicant brought judicial review applications naming a variety of respondents (his school board; his union; his union's law firm; his school board's law firm; the Ontario College of Teachers; the Law Society of Upper Canada; the Ontario Judicial Council; the Human Rights Tribunal; and the Ontario Labour Relations Board) – Finding the standard of review to be reasonableness and there being no discrimination and no errors of law or unreasonable findings of fact, the Court dismissed the application(s) for judicial review – Application(s) Dismissed

GODFRED KWAKU HIAMEY; RE: CONSEIL SCOLAIRE DE DISTRICT CATHOLIQUE CENTRE-SUD; RE: ASSOCIATION DES ENSEIGNANTS ET DES ENSEIGNANTES FRANCO-ONTARIENS; RE: NELLIGAN O'BRIEN PAYNE LLP; RE: SACK GOLDBLATT MITCHELL LLP; RE: ONTARIO COLLEGE OF TEACHERS; RE: ONTARIO LABOUR RELATIONS BOARD; RE: LAW SOCIETY OF UPPER CANADA; RE: ONTARIO JUDICIAL COUNCIL; RE: ONTARIO HUMAN RIGHTS TRIBUNAL RELATIONS BOARD; Divisional Court File No. DC-13-345-JR & DC-13-346-JR; Dated August 13, 2015; Panel: Perkins, Kruzick and Thorburn, JJ. (15 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Labourers' International Union of North America, Local 1059 Divisional Court No. 384/15	0883-14-R	Pending
Universal Workers Union, Labourers' International Union of North America, Local 183 Divisional Court No. 368-15	1938-12-R	Pending
LBM Construction Specialties Inc. Divisional Court No. 353/15	0121-14-R	Pending
Royal Ottawa Health Care Group - Brockville Mental Health Centre Divisional Court No. 15-2123 **(Ottawa)**	2460-14-HS 2999-14-IO 3000-14-IO	Pending
EMT Contractor Division Inc Divisional Court No. 32-15 **(London)**	3514-13-R	Pending
Carlene Bailey Divisional Court No. 173/15	0480-13-U	Pending
Valoggia Linguistique Divisional Court No. 15-2096	3205-13-ES	Pending
Toran Carpentry Inc. Divisional Court No. 49/15	0229-13-R	Pending
Sentry Electrical (Canada) ULC Divisional Court No. 041/15	0505-14-R	October 2, 2015
Charles Zubovits Divisional Court No. 3/15	1368-04-U	September 29, 2015
Royal Ottawa Hospital Divisional Court No. 14-62782 **(Ottawa)**	2461-14-IO	Pending
BACU (BMC Masonry) Divisional Court No. 459/14	3236-13-R 0451-14-U	September 17, 2015
Dean Warren Divisional Court No. 345/14	2336-13-U	September 22, 2015
Donald A. Williams Divisional Court No. 327/14	1129-13-U	November 10, 2015
PCL Constructors Canada Inc. Divisional Court No. 240/14	3414-11-G	November 26, 2015
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	August 13, 2015 Dismissed